

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6317
BILL NUMBER: HB 1184

NOTE PREPARED: Dec 23, 2014
BILL AMENDED:

SUBJECT: Controlled Substances.

FIRST AUTHOR: Rep. Davisson
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State

Summary of Legislation: *Optometrist Prescription of Tramadol*- The bill authorizes optometrists who meet certain requirements to prescribe Tramadol.

Tramadol Added to Schedule IV- The bill adds Tramadol as a Schedule IV controlled substance.

Reclassifying Hydrocodone Combination Products- The bill includes hydrocodone combination products as Schedule II controlled substances. The bill also removes dihydrocodeinone from the Schedule III controlled substance list.

Effective Date: Upon passage.

Explanation of State Expenditures: *Optometrist Prescription of Tramadol*- There would likely be more applications for the controlled substance registry (CSR) to process as a result of the bill. It is likely the administrative time needed to process the applications from optometrists would be handled within the existing level of resources of the Professional Licensing Agency and the State Board of Pharmacy.

Tramadol Added to Schedule IV- Classifying Tramadol as a Schedule IV controlled substance would make persons who either unlawfully possess Tramadol or deal in Tramadol a new crime ranging from a misdemeanor to a Level 3 felony, depending on whether the person is convicted of illegal possession or dealing. Under current law, Tramadol is classified as a legend drug. Possession or unauthorized distribution of a legend drug without a prescription is a Level 6 felony or a Level 5 felony if the person has a prior offense.

For possession, the following table illustrates the potential changes.

| Possession of Tramadol | | |
|----------------------------------|----------------|--|
| | Current Law | If Schedule IV Drug |
| First-Time Conviction | Level 6 Felony | Class A Misdemeanor |
| Conviction with Prior Conviction | Level 5 Felony | Level 6 Felony (or enhancing circumstances IC 35-48-1-16.5) |
| Source | IC 16-42-19-27 | IC 35-48-4-7 |

If the crime is dealing or illegal distribution of Tramadol, the following penalties would apply.

| Dealing in Tramadol | | |
|----------------------------------|----------------|---|
| | Current Law | If Schedule IV Drug |
| First-Time Conviction | Level 6 Felony | Class A Misdemeanor to Level 3 Felony (depending on weight of drug) |
| Conviction with Prior Conviction | Level 5 Felony | Level 6 to Level 3 felony (or other enhancing circumstances IC 35-48-1-16.5) |
| Source | IC 16-42-19-27 | IC 35-48-4-3 |

The following table illustrates the possible sentencing ranges by felony level.

| Sentencing Ranges by Felony Level | | | |
|-----------------------------------|---------------|--------------|----------------|
| Level 3 | Level 4 | Level 5 | Level 6 |
| 3 to 16 Years | 2 to 12 Years | 1 to 6 Years | 6 to 30 Months |

Reclassifying Hydrocodone Combination Products – Reclassifying dihydrocodeinone from a Schedule III controlled substance to a Schedule II narcotic will increase the potential penalties. The changes in the criminal penalties for both dealing and possessing Schedule II and III drugs are shown in the following tables.

| Felony Levels for Dealing by Weight (in grams) | | | | | |
|---|------------------|---|---|---|---|
| | Level 6 | Level 5 | Level 4 | Level 3 | Level 2 |
| Schedule III Controlled Substances (IC 35-48-4-2) | Less than 1 gram | Between 1 and 5 grams or less than 1 gram and enhancing circumstances | Between 5 and 10 grams or between 1 and 5 grams and enhancing circumstances | Between 10 and 28 grams or between 5 and 10 grams and enhancing circumstances | More than 28 grams or between 10 and 28 grams and enhancing circumstances |
| Schedule II Narcotics (IC 35-48-4-1) | | Less than 1 gram | Between 1 and 5 grams or less than 1 gram and enhancing circumstances | Between 5 and 10 grams or between 1 and 5 grams and enhancing circumstances | More than 10 grams or between 5 and 10 grams and enhancing circumstances |

| Felony Levels for Possession by Weight (in grams) | | | | | |
|---|-------------|--|---|---|---|
| | Misdemeanor | Level 6 | Level 5 | Level 4 | Level 3 |
| Schedule III Controlled Substances (IC 35-48-4-7) | Any amount | Any amount and enhancing circumstances | | | |
| Schedule II Narcotics (IC 35-48-4-6) | | If less than 5 grams | Between 5 and 10 grams or less than 5 grams and enhancing circumstances | Between 10 and 28 grams or between 5 and 10 grams and enhancing circumstances | More than 28 grams or between 10 and 28 grams and enhancing circumstances |

Enhancing circumstances include the following:

- A prior conviction for a drug violation.
- Committing the offense while possessing a firearm.
- Committing the offense on a school bus; or in, on, or within 500 feet of either school property or a public park while a person younger than 18 was reasonably expected to be present.
- Delivering or financing the delivery of the drug to a person younger than 18 or at least 3 years junior to the person.
- Manufacturing or financing the manufacture of the drug.
- Committing the offense in the physical presence of a child younger than 18, knowing that the child was present and might be able to see or hear the offense.

The following table illustrates the possible sentencing ranges by felony level.

| Sentencing Ranges by Felony Level | | | | |
|-----------------------------------|--------------|---------------|---------------|----------------|
| Level 6 | Level 5 | Level 4 | Level 3 | Level 2 |
| 6 to 30 Months | 1 to 6 Years | 2 to 12 Years | 3 to 16 Years | 10 to 30 Years |

Additional Information: DOC Offender Costs- The average expenditure to house an adult offender was \$19,497 in FY 2014. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,210 annually, or \$8.77 daily, per prisoner.

Explanation of State Revenues: *Optometrist Prescription of Tramadol*- If every optometrist with an active license at the close of FY 2014 were to apply for the controlled substance registration as a result of the bill, the additional revenue would equal approximately \$83,800 to the state General Fund.

Additional Information: Controlled substance registrations cost \$60. There were 1,327 optometrists with an active legend drug certificate at the close of FY 2014, or 95% of all active licensed optometrists.

Explanation of Local Expenditures: *Tramadol Added to Schedule IV*- Under state law, a person who possesses Tramadol without a prescription commits a Class B misdemeanor (IC 16-42-3-12). If Tramadol is classified as a Schedule IV drug, then a person who possesses less than one gram of Tramadol without a prescription commits a Class A misdemeanor.

Explanation of Local Revenues:

State Agencies Affected: Professional Licensing Agency; State Board of Pharmacy; Department of Correction.

Local Agencies Affected: County sheriffs.

Information Sources: Professional Licensing Agency; Department of Correction; Jennifer Haley, Indiana Prosecuting Attorneys Council.

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